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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,429	05/22/2000	Jeffery A. Konecke	1002-111	2363

7590

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EXAMINER

ALEXANDER, LYLE

ART UNIT PAPER NUMBER

1743

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/575,429

Applicant(s)

KONECKE, JEFFERY A.

Examiner

Lyle A. Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11, 12 and 16-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11, 12 and 16-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,4-8 and 19-26 are rejected under 35 U.S.C. 102(b,e) as being clearly anticipated by WO 97/33519 (referenced as WO'97 hereafter) or Lappe(USP 5,916,815) respectively.

See the appropriate paragraph of the 1/4/05 Office action.

With respect new claims 24-26, they are directed to the element previously described in the previous Office action.

Claims 1,3-8,16 and 19-26 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Lappe et al. (USP 6,342,183).

Lappe et al. teach a cup(24) for receiving a biological sample for testing. Cap(26) is mounted on the cup(24) by mating thread(51). The surface(42) of the cap is transparent to view the results of the test strip placed within the cup. Test strip(61) have been read on the claimed cassette. Column 4 lines 38+ described the cup as having a reduced rear portion(32) bounded by flat sides(34) extending to an oblique wall surface(38). This has been read on the claimed "flat front wall".

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2-3 and 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33519 (referenced as WO'97 hereafter) or Lappe(USP 5,916,815) in view of Davis(USP 5,119,830).

See WO 97/33519 (referenced as WO'97 hereafter) and Lapp(USP 5,916,815) *supra*.

These references are silent to the claimed 1-3' slope of the container, the retracted flat face, a one-way flap to prevent spillage of the fluid, and the claimed polymer.

Davis teaches in column 3 lines 40+ the floor is inclined and in column 5 line 28+ the sloping of the floor is advantageous to manage the flow of the fluid sample.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable has predictable and well-known results.

The degree of slop of the floor would have been a result effective variable to achieve the expected and well-known results speed of fluid travel and fluid pool depth created by the slope.

It would have been within the skill of the art to modify WO 97/33519 (referenced as WO'97 hereafter) or Lapp(USP 5,916,815) in view of Davis and slope the floor to any angle, such as 1-3', to achieve the well known and expected results of fluid flow management described above.

The orientation of the viewing face would have been a result effective variable to achieve the well-known and predictable results of bringing the results closer to permit better viewing by people with poor eye sight.

The use of a one-way valve is convention in the art of testing to prevent escape of test substance, which is potentially hazardous. Implementation of a one-way valve would have been a result effective variable to gain the well-known and expected advantage of preventing the sample from contacting the technician.

It would have been within the skill of the art to modify WO 97/33519 (referenced as WO'97 hereafter) or Lapp(USP 5,916,815) and use a flat retracted face to bring the results closer to the viewer and use of a one-way valve as optimization of result effective variables.

The court decide In re Leshin (125 USPQ 416) that selection of a plastic based upon its suitability of intended use would have been within the skill of the art.

All of the claimed plastics are notoriously well known in the art and have the advantages of inertness, durability, lightweight, ability to be recycled and low cost of manufacture. It would have been within the skill of the art to modify WO 97/33519 (referenced as WO'97 hereafter) or Lapp(USP 5,916,815) and use the claimed plastic in view of Leshin above.

Claims 2,11-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lappe et al. (USP 6,342,183) in view of Davis (USP 5,119,830).

Lappe et al. are silent to the claimed 1-3' slope of the floor and the plastic materials of construction.

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Davis teaches in column 3 lines 40+ the floor is inclined and in column 5 line 28+ the sloping of the floor is advantageous to manage the flow of the fluid sample.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable has predictable and well-known results.

The degree of slop of the floor would have been a result effective variable to achieve the expected and well-known results speed of fluid travel and fluid pool depth created by the slope.

It would have been within the skill of the art to modify Lappe et al. in view of Davis and slope the floor to any angle, such as 1-3', to achieve the well known and expected results of fluid flow management described above.

The court decide In re Leshin (125 USPQ 416) that selection of a plastic based upon its suitability of intended use would have been within the skill of the art.

All of the claimed plastics are notoriously well known in the art and have the advantages of inertness, durability, lightweight, ability to be recycled and low cost of manufacture. It would have been within the skill of the art to modify Lappe et al. and use the claimed plastic in view of Leshin above.

Claims 3,16 and 18 rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/33519 (referenced as WO'97 hereafter) or Lappe(USP 5,916,815) in view of Lappe et al.(USP 6,342,183).

See WO 97/33519 (referenced as WO'97 hereafter), Lappe et al.(USP 6,342,183) and Lappe(USP 5,916,815) supra.

These claims are silent to the recessed front face of the container.

Lappe et al. teach in column 4 lines 38+ described the cup as having a reduced rear portion(32) bounded by flat sides(34) extending to an oblique wall surface(38).

This irregular shape of the cup is facilitates easy manual handling of the cup enabling it to be readily grasped by the user.

It would have been within the skill of the art to modify WO 97/33519 (referenced as WO'97 hereafter) or Lapp(USP 5,916,815) in view of Lappe et al. and make the walls recessed to gain the above advantages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander  
Primary Examiner  
Art Unit 1743

